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Letter dated 9 December 2005 from the President of the Governing Council of the United Nations Compensation Commission addressed to the President of the Security Council

The Governing Council of the United Nations Compensation Commission has concluded its fifty-eighth session, which was held at Geneva from 6 to 8 December 2005.

During the opening plenary meeting, representatives of Kuwait, Iraq, India and Palestine addressed the Council. Their respective statements are being sent by mail with the original of the present letter.

During the session, the Council discussed the following issues and decided as follows:

To take note of the report of the Executive Secretary: summary of activities, covering the period from 1 September to 15 November 2005.

With respect to the issue of the shortfall to the Compensation Fund of approximately $37.2 million, to request that the secretariat follow up on its correspondence with the Controller; to request that the secretariat prepare an information note on the implications of the shortfall on the payment of claims for the Council's consideration; and to keep this issue on the agenda for the next session of the Governing Council.

To approve corrections to certain category A, C and D claims contained in the thirty-second report of the Executive Secretary pursuant to article 41 of the Provisional Rules for Claims Procedure (S/AC.26/Dec.254 (2005)).

To adopt a decision adopting the guidelines for a follow-up programme on environmental claim awards which had been reviewed and considered by the F4 claimant Governments, consisting of the Islamic Republic of Iran, Jordan, Kuwait, Saudi Arabia, and the Government of Iraq; they had also recommended that the guidelines be presented to the Governing Council (S/AC.26/Dec.258 (2005)).

To request that the secretariat send a letter to the Government of Kuwait regarding certain monitoring and assessment studies, advising that the Council has considered the responses from Kuwait on this issue and further noting that although modifications have been made to the studies, they still meet the objectives of the approved awards; the letter is to also indicate that, in the

future, and in accordance with the guidelines established for the follow-up programme, which are also applicable to the remaining monitoring and assessment studies, modifications to funded projects must be submitted to the Governing Council for approval prior to such modifications being made.

To take note of the briefing provided by the secretariat on audit certificates concerning unfinished monitoring and assessment environmental projects in the first instalment of F4 claims and to note that the Saudi Arabia issues have been satisfactorily resolved and that the secretariat is awaiting a response from Kuwait; to request that the secretariat continue its work on this issue; to request that the secretariat report back to the Governing Council, where necessary.

With respect to the issue of some public availability of the environmental monitoring and assessment databank, which comprises information submitted by claimant Governments, to request that the secretariat participate in a meeting of F4 claimant Governments, the Government of Iraq and the Compensation Commission scheduled to take place on 17 December 2005 in Kuwait to address the needs, requirements, cost allocation and other issues pertaining to the regional databank; to request that the secretariat provide an update to the Governing Council on this issue following the meeting for the Council's consideration at its next session.

To adopt a decision concerning an Iranian deceased detainee and approve the award recommended in the amount of $220,000 (S/AC.26/Dec.257 (2005)).

To adopt a decision concerning the payment of claim No. 4002126 filed by Lloyd's Syndicate No. 1131 (S/AC.26/Dec.255 (2005)).

To take note of the status report on the archiving of Compensation Commission records that was provided by the secretariat.

To adopt the access policy for Compensation Commission records archives prepared by the secretariat.

To refer the request of Kuwait for the return of confidential documents to an informal meeting of the Working Group for further consideration.

To take note of the report of the Executive Secretary on the distribution of payments and transparency and the return of undistributed funds, and to request the secretariat to continue to inform the Governing Council of the reports of Governments and international organizations on the distribution of payments and the return of undistributed funds; and to request that all Governments seeking payment of undistributed funds upon locating claimants provide accompanying information substantiating that the claimants concerned have been located.

To adopt a decision on the payment mechanism and the priority of payment of outstanding claims (S/AC.26/Dec.256 (2005)).

To request that the secretariat write a further letter to the Government of Bangladesh regarding the exchange rates used for claims payment expressing the Council's preoccupation on this issue; to invite a delegation to attend the

next informal meeting of the Working Group; and to keep this issue on the agenda of the Governing Council.

To request that the secretariat write further follow-up letters to the Governments of Liberia, Senegal and the former Yugoslav Republic of Macedonia regarding non-compliance with the reporting requirements of decisions 18 and 48; and to keep this issue on the agenda of the Governing Council.

With respect to the issue of potential duplicate awards, to request that the secretariat conduct additional investigations and provide monthly updates on the status of the ongoing investigation to the Governing Council; to refer a further discussion of the options and recommendations tabled by the secretariat to the next informal meeting of the Working Group for further consideration; to request that the secretariat take any necessary action, on a provisional basis, to preserve all the options presented by the secretariat pending a decision on this issue; to take note that the Executive Secretary has suspended the payment on repayable claims and that further duplication checks will be performed as requests for repayment are made; with respect to paid claims, to endorse the Executive Secretary's decision to withhold sufficient funds as a temporary precautionary measure to cover the total of the possible duplicate awards in the next payment to the Government of the Islamic Republic of Iran scheduled to be made in January 2006; to request that the secretariat immediately inform the Government of the Islamic Republic of Iran of this decision and to re-examine this matter at its next session; to approve the extension of the staff necessary to pursue its investigation until 30 June 2006; to consider, at the next session, the possible further extension of some staff, if necessary, once the secretariat has completed the next stage of its investigation and the Council has taken a further decision on this issue.

To take note of the recommendations in the management letter from the United Nations Board of Auditors on the audit of the interim financial statements of the Compensation Commission dated 19 September 2005 and the secretariat's response thereto; with respect to recommendations 20 and 21 in the Board's letter, to note that the Council's relevant decisions on this matter do not require the provision of audit certificates in the manner recommended by the Board and to note that the secretariat has sought clarification with respect to these recommendations; to proceed with the payment of awards and to keep the matter under review; to take note of the audit by the Office of Internal Oversight Services and the secretariat's response thereto; to request that the secretariat continue to provide updates on audit issues at future informal meetings of the Working Group; and to keep the audit issue on the agenda of the Governing Council.

With respect to the phasing out of the Compensation Commission, to note that the secretariat's initial proposal for the phasing out was divided into the two-year period 2006-2007, expected to be required to complete the payment of all individual awards as well as certain residual activities, and the post-2007 period; to note that the post-2007 phase has been brought forward to mid-2007 as payments to individual claimants will be completed as much as a year earlier than projected in the 11 November 2004 note; to consider the three options presented in the note of 11 November 2004, including (a) the

maintenance of the Compensation Fund under the continuing oversight of the Governing Council, supported by a residual secretariat in Geneva; (b) the maintenance of the Compensation Fund but the transfer of oversight to the Security Council in New York; and (c) the transferring of responsibility for continuing payments to the Government of Iraq under the supervision of the Security Council; to note that transferring the oversight function to New York would result in a loss of institutional memory and expertise that has been acquired by both the Governing Council and the secretariat staff; with respect to the cost projections for each of the options, to note that while the projected costs of option (b) appear to be lower than those of option (a), in reality, this may not be the case once the full details for such an arrangement have been reviewed; to note that a residual Compensation Commission secretariat in Geneva would be in a position to help oversee the monitoring mechanism for environmental awards that the Governing Council has under consideration, as well as registry and archiving functions that, irrespective of which option is selected by the Governing Council, would require the maintenance of the Registry and maintaining a number of staff in Geneva until the end of 2008; and to adopt option (a) as an interim arrangement while keeping option (c) open for consideration at a future date.

With respect to the 2006-2007 biennium, to note that a small increase in the 2006 segment of the budget is required since the staff (17 Professional and 18 General Service) expected to be on board as of 1 January 2006 may need to be supplemented in order to complete tasks relating to the phasing out that will need to be brought forward, and to agree in principle to the temporary budget increase in this respect; and to note that the Executive Secretary will be submitting a detailed revision of the budget for the 2006-2007 biennium, based on the conclusion reached by the Governing Council on the phasing out of the Compensation Commission.

With respect to the request by the Government of India to extend the date for the location of and payment to unlocated claimants, to note that more than nine months remain before the cut-off date and that in principle there should be no extension of the 30 September 2006 deadline; however, should there be a sudden large influx of repayment requests as the deadline approaches, which could be documented by the Government concerned, to reconsider the request, including the potential cost implications of extension of secretariat staff.

With respect to the request by Palestine for the reconsideration of 8,000 ineligible claims, the Governing Council recalled its previous decision that only those claimants who could demonstrate that they did not have a full and effective opportunity to file claims within the original filing deadline were eligible to participate in the Palestinian late claims programme; it also recalled that, under article 40(4) of the Compensation Commission Provisional Rules for Claims Procedure, decisions of the Governing Council are final and not subject to appeal or review on procedural, substantive or other grounds, and further recalled that the relevant panel of Commissioners assessed eligibility on a case-by-case basis and that their discretionary determinations in that regard are not amenable to correction under article 41 of the Rules; to direct that the secretariat inform the Palestinian Authority that the Council is unable to accept this request.

To take note of the final report dated 24 November 2005 regarding technical assistance provided to the Government of Iraq in respect of environmental claims before the Compensation Commission and to note that the remaining funds in the amount of $1,320,002.74 will revert to the Compensation Fund.

That the fifty-ninth session of the Governing Council be held from 7 to 9 March 2006; that the sixtieth session of the Governing Council be held from 27 to 29 June 2006; and that informal meetings of the Working Group be held between regular sessions of the Governing Council, as required.

As indicated above, a decision was taken at this session to modify the payment mechanism and the priority of payment of outstanding claims. The Governing Council, in previous conclusions, had indicated that owing to the character of environmental claims, it would consider, at the appropriate time, the possibility of a different payment mechanism which would prioritize successful environment claims. After the last payment of approximately $655 million on 27 October 2005, there are only 85 approved claims (in categories D, E and F), with an outstanding award balance of $32.4 billion, that have not been paid in full. Under the Council's decision, quarterly payments will be made in rounds of $2 million, rather than $100,000, and following the completion of payments to individual claimants and payment to all claims up to the level of $65 million, claimants with outstanding amounts greater than $500 million will receive a maximum amount of $2 million per quarter, whereas claimants with outstanding amounts smaller than $500 million and environmental awards approved for the third, fourth and fifth instalments of category F4 environmental remediation claims, will receive rounds of payments of $2 million, or the unpaid balance of the award, if less, until all available amounts in the Compensation Fund have been exhausted.

To date, approximately $20 billion has been made available to Governments and international organizations for distribution to successful claimants in all categories of claims. On 30 November 2005 the balance of the Compensation Fund was approximately $206 million.

(*Signed*) Ambassador Tassos **Kriekoukis**
President of the Governing Council

Annex

Documents before the Governing Council at its fifty-eighth session

1. Thirty-second report of the Executive Secretary pursuant to article 41 of the Provisional Rules for Claims Procedure (S/AC.26/2005/13);
2. Decision concerning corrections of awards pursuant to article 41 of the Provisional Rules for Claims Procedure (S/AC.26/Dec.254 (2005));
3. Decision concerning the expedited payment of United Nations Compensation Commission claim number 4002126 (S/AC.26/Dec.255 (2005));
4. Decision concerning the payment mechanism and the priority of payment of outstanding claims (S/AC.26/Dec.256 (2005));
5. Decision concerning an Iranian deceased detainee claim (S/AC.26/Dec.257 (2005));
6. Decision concerning follow-up programme for environmental claims awards (S/AC.26/Dec.258 (2005)).